

SENATE BILL No. 343

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-24-12-10; IC 34-30-2-149.5; IC 35-36-2-4; IC 35-39.

Synopsis: Civil commitment of sexual predators. Provides for the commitment of a person found to be a sexually violent predator to a mental health institution for an indefinite period following the person's release from prison after serving a sentence imposed for a sexual offense conviction. Provides for the civil commitment of a person charged with a sexual offense upon a finding of not guilty by reason of insanity. Provides for an annual review and hearing on the person's condition and for the possible release of the person. Requires the commissioner of the department of correction to establish a multidisciplinary review team to assess whether a person meets the definition of a sexually violent predator. Requires the attorney general to establish a prosecuting attorney review committee to review the records of each person referred to the review committee. Makes conforming amendments.

Effective: July 1, 2004.

Young R Michael

January 12, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 343

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-24-12-10, AS AMENDED BY P.L.215-2001,
2 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 10. (a) Upon admission to a state institution
4 administered by the division of mental health and addiction, the
5 gatekeeper is one (1) of the following:

6 (1) For an individual with a psychiatric disorder, the community
7 mental health center that submitted the report to the committing
8 court under IC 12-26.

9 (2) For an individual with a developmental disability, a division
10 of disability, aging, and rehabilitative services service coordinator
11 under IC 12-11-2.1.

12 (3) For an individual entering an addictions program, an
13 addictions treatment provider that is certified by the division of
14 mental health and addiction.

15 (b) The division is the gatekeeper for the following:

16 (1) An individual who is found to have insufficient
17 comprehension to stand trial under IC 35-36-3.

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(2) An individual who is found to be not guilty by reason of insanity under IC 35-36-2-4 and is subject to a civil commitment under IC 12-26 **or IC 35-39.**

(3) An individual who is immediately subject to a civil commitment upon:

(A) the individual's release from incarceration in a facility administered by the department of correction or the Federal Bureau of Prisons; ~~or upon~~

(B) being charged with or convicted of a forcible felony under IC 35-41-1; **or**

(C) **a determination under IC 35-39-8 that the individual is a sexually violent predator.**

(4) An individual placed under the supervision of the division for addictions treatment under IC 12-23-7 and IC 12-23-8.

(5) An individual transferred from the department of correction under IC 11-10-4.

SECTION 2. IC 34-30-2-149.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 149.5. IC 35-39-4-1 (Concerning persons performing services under the law governing civil commitment of sexually violent predators).**

SECTION 3. IC 35-36-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. **(a) Except as provided in subsection (b),** whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7. The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and ~~IC 12-7-2-130(a)(1).~~ **IC 12-7-2-130(1).** The court may subpoena any other persons with knowledge concerning the issues presented at the hearing. The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The

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prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(b) Whenever a defendant is found not responsible by reason of insanity at the time of the commission of a sexually violent offense (as defined in IC 35-39-2-8), the prosecuting attorney shall give written notice regarding the person to the attorney general as provided in IC 35-39-3-1. Upon receipt of the notice required by this subsection, the attorney general shall initiate proceedings under IC 35-39 for the commitment of the defendant.

SECTION 3. IC 35-39 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 39. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Chapter 1. Applicability

Sec. 1. IC 12-26 does not apply to a person who appears to be a sexually violent predator and is the subject of an agency notice under IC 35-39-3-1.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agency" means an agency having custody of a person serving a sentence or term of confinement. The term includes the department of correction, the division of mental health and addiction, and the parole board.

Sec. 3. "Mental abnormality" means a congenital or an acquired condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses to a degree that makes the person a menace to the health and safety of others.

Sec. 4. "Multidisciplinary team" refers to the multidisciplinary team established under IC 35-39-5-1.

Sec. 5. "Predatory" describes acts directed toward strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

Sec. 6. "Prosecuting attorney review committee" refers to the prosecuting attorney review committee appointed under IC 35-39-5-2.

Sec. 7. "Sexually motivated" means that one (1) of the purposes for which a defendant commits a crime is for the purpose of the defendant's sexual gratification.

Sec. 8. "Sexually violent offense" includes any of the following:

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- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor as a Class A or Class B felony (IC 35-42-4-9).
- (9) Incest (IC 35-46-1-3).
- (10) Sexual battery (IC 35-42-4-8).
- (11) Any conviction before July 1, 2004, for a felony that is comparable to an offense listed in subdivisions (1) through (10).
- (12) Any federal or other state conviction for an offense that is substantially similar to an offense listed in subdivisions (1) through (10).
- (13) An attempt to commit (as defined in IC 35-41-5-1) or conspiracy to commit (as defined in IC 35-41-5-2) an offense listed in subdivisions (1) through (12).
- (14) An act that, either at the time of sentencing for an offense or subsequently during civil commitment proceedings under this article, has been determined beyond a reasonable doubt to have been sexually motivated.

Sec. 9. "Sexually violent predator" means a person who:

- (1) has been convicted of or charged with a sexually violent offense; and
- (2) suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if the person is not confined in a secure facility.

Chapter 3. Notice of Release of a Sexually Violent Predator

Sec. 1. If it appears to an agency that a person is a sexually violent predator, the agency shall give written notice regarding the person to the attorney general and the multidisciplinary team not later than ninety (90) days before any of the following occurs:

- (1) The release date for a person who has been convicted of a sexually violent offense. However, in the case of a person who is returned to a correctional facility for not more than ninety (90) days as a result of revocation of postrelease supervision, written notice shall be given under this subdivision as soon as is practicable following the person's readmission to a

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correctional facility.

(2) The release date for a person who has been:

(A) charged with a sexually violent offense; and

(B) determined to be incompetent to stand trial under IC 35-36-3.

(3) The release date for a person who has been found not responsible by reason of insanity of a sexually violent offense under IC 35-36-2-3.

(4) The release date for a person who has been found not guilty of a sexually violent offense under IC 35-36-2-3.

Sec. 2. An agency shall include in the notice required by section 1 of this chapter the following:

(1) The name of the person who is the subject of the notice, identifying factors, anticipated future residence, and offense history.

(2) Documentation of institutional adjustment and treatment received by the person who is the subject of the notice.

Chapter 4. Immunity From Liability

Sec. 1. An agency, employees and officials of an agency, members of the multidisciplinary team and members of the prosecuting attorney review committee appointed under IC 35-39-5, and individuals contracting, appointed, or volunteering to perform services under this article are immune from liability for good faith conduct under this article.

Chapter 5. Multidisciplinary Team and Prosecuting Attorney Review Committee

Sec. 1. (a) The commissioner of the department of correction shall establish a multidisciplinary team that may include individuals from other state agencies to review available records of each person about whom notice is received under IC 35-39-3.

(b) The multidisciplinary team, not later than thirty (30) days after receiving notice under IC 35-39-3, shall assess whether a person is a sexually violent predator. The multidisciplinary team shall notify the attorney general of the multidisciplinary team's assessment.

Sec. 2. (a) The attorney general shall appoint a prosecuting attorney review committee to review the records of each person referred to the attorney general under IC 35-39-3-1.

(b) The prosecuting attorney review committee shall assist the attorney general in determining whether a person is a sexually violent predator.

(c) The assessment of the multidisciplinary team that is made

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under section 1(b) of this chapter must be made available to the attorney general and the prosecuting attorney review committee.

Chapter 6. Determination of Probable Cause; Contents of Petition; Hearing

Sec. 1. If it appears that a confined person may be a sexually violent predator and the prosecuting attorney review committee appointed under IC 35-39-5-2 has determined that the person is a sexually violent predator, the attorney general may file a petition with a court having jurisdiction not later than seventy-five (75) days after the date the attorney general receives written notice under IC 35-39-3-1. The petition must name the confined person as the respondent.

Sec. 2. A petition filed under this chapter must:

- (1) allege that the person named as respondent in the petition is a sexually violent predator; and
- (2) state sufficient facts to support the allegation.

Sec. 3. (a) Upon the filing of a petition under section 1 of this chapter, the court shall determine whether probable cause exists to believe that the person named as respondent in the petition is a sexually violent predator.

(b) If the court determines under subsection (a) that probable cause exists to believe that the person named as respondent in the petition is a sexually violent predator, the court shall order the agency confining the person named as respondent to retain custody of the person.

Sec. 4. (a) A person detained under section 3 of this chapter must be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator.

(b) Not later than seventy-two (72) hours after an order is entered under section 3 of this chapter, the court shall conduct the probable cause hearing described in subsection (a).

Sec. 5. At the hearing held under section 4 of this chapter, the court shall:

- (1) verify the detained person's identity; and
- (2) determine whether probable cause exists to believe that the person is a sexually violent predator.

The state may rely upon the petition filed under section 1 of this chapter and may supplement the petition with additional documentary evidence or live testimony.

Sec. 6. At the probable cause hearing held under section 4 of this chapter, the detained person has the following rights in addition to

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the rights specified in section 4 of this chapter:

- (1) To be represented by counsel.
- (2) To present evidence on the detained person's behalf.
- (3) To cross-examine witnesses who testify against the detained person.
- (4) To view and copy all petitions and reports in the court file.

Sec. 7. If a probable cause determination is made by the court after a hearing held under section 4 of this chapter, the court shall order that the detained person be transferred to an appropriate secure facility, including a county jail, for an evaluation as to whether the detained person is a sexually violent predator. The evaluation must be conducted by an individual whom the court considers professionally qualified to conduct the examination.

Chapter 7. Trial

Sec. 1. (a) Not later than sixty (60) days after the completion of a hearing held under IC 35-39-6, the court shall conduct a trial to determine whether the person who was the subject of the hearing is a sexually violent predator.

(b) The trial may be continued:

- (1) on the request of either party and a showing of good cause; or
- (2) by the court on its own motion in the due administration of justice;

when the person named as defendant in the trial will not be substantially prejudiced.

Sec. 2. At all stages of the proceedings under this article, a person named as defendant in the trial conducted under section 1 of this chapter is entitled to the assistance of counsel. If the person is indigent, the court shall appoint counsel to assist the person.

Sec. 3. (a) If a person is subjected to an examination under this article, the person may retain experts or professional persons to perform an examination on the person's behalf.

(b) If a person wishes to be examined by a qualified expert or professional person of the person's own choice, the examining expert or professional is entitled to have reasonable access to the person for the purpose of the examination, as well as to all relevant medical and psychological records and reports.

(c) For a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and determine reasonable compensation for the services. If the court determines that the services are necessary and the expert's or professional person's requested compensation for the services is

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1 reasonable, the court shall assist the person in obtaining the expert
 2 or professional person to perform an examination or participate in
 3 the trial on the person's behalf.

4 (d) The court shall approve payment for the services obtained
 5 under subsection (c) upon the filing of a certified claim for
 6 compensation supported by a written statement specifying the time
 7 expended, services rendered, expenses incurred on behalf of the
 8 person, and compensation received in the same case or for the
 9 same services from any other source.

10 Sec. 4. The defendant in a trial conducted under section 1 of this
 11 chapter, the attorney general, and the court are entitled to demand
 12 that the trial be before a jury. A demand for a jury trial must be
 13 filed in writing at least four (4) days before trial. The number and
 14 selection of jurors is determined under IC 35-37-1. If a demand for
 15 a jury trial is not made, the trial shall be before the court.

16 Chapter 8. Commitment Procedure; Interagency Agreements;
 17 Mistrials

18 Sec. 1. (a) The court or jury in a trial conducted under
 19 IC 35-39-7 shall determine beyond a reasonable doubt whether the
 20 defendant is a sexually violent predator. If the determination that
 21 the defendant is a sexually violent predator is made by a jury, the
 22 jury verdict must be unanimous.

23 (b) The verdict may be appealed.

24 Sec. 2. (a) If the court or jury determines that the defendant is
 25 a sexually violent predator, the defendant shall be committed to the
 26 custody of the division of mental health and addiction for control,
 27 care, and treatment until the defendant's mental abnormality or
 28 personality disorder has changed so that the defendant is safe to be
 29 at large.

30 (b) The control, care, and treatment of a person committed
 31 under subsection (a) must be provided at a facility operated by the
 32 division of mental health and addiction.

33 Sec. 3. A person committed under section 2 of this chapter for
 34 control, care, and treatment by the division of mental health and
 35 addiction under this article must be:

- 36 (1) kept at all times in a secure facility;
- 37 (2) segregated at all times from other patients under the
- 38 supervision of the division of mental health and addiction;
- 39 and
- 40 (3) kept in a separate building or facility from any other
- 41 building or facility housing patients under the supervision of
- 42 the division of mental health and addiction who have not been

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committed under this article.

Sec. 4. (a) The division of mental health and addiction may enter into an interagency agreement with the department of correction for the confinement of a person found to be a sexually violent predator under this article.

(b) A person who is in the custody of the department of correction under an interagency agreement executed under this section must be housed and managed separately from offenders in the custody of the department of correction, and except for occasional instances of supervised incidental contact, must be segregated from the offenders.

Sec. 5. (a) After a trial conducted under IC 35-39-7, if a court or jury is not satisfied beyond a reasonable doubt that the defendant at trial is a sexually violent predator, the court shall order the person's release.

(b) Upon a mistrial of a trial held under IC 35-39-7, a court shall order that the defendant be held at an appropriate secure facility, including a county jail, until another trial is conducted.

(c) A subsequent trial following a mistrial under this article must be held not later than ninety (90) days after the previous trial, unless the subsequent trial is continued under IC 35-39-7-1.

Sec. 6. (a) If a person:

- (1) is charged with a sexually violent offense;
- (2) has been found incompetent to stand trial;
- (3) is to be retained under IC 35-36-3; and
- (4) is subject to a commitment proceeding under this chapter;

the court shall first conduct a hearing to hear evidence and determine whether the person committed the act or acts charged.

(b) A hearing held under this section must comply with the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and the constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

(c) After hearing evidence at a hearing held under this section, the court shall make written findings on each of the following:

- (1) Whether the person who is the subject of the hearing committed the act or acts charged.
- (2) The extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including the effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf.
- (3) The extent to which the evidence could be reconstructed

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without the assistance of the person.

(4) The strength of the prosecution's case.

(d) If after the conclusion of a hearing held under this section, the court finds beyond a reasonable doubt that the person committed the act or acts charged, the court:

(1) shall enter a final order, appealable by the person, on that issue; and

(2) may initiate on its own motion, or direct the prosecuting attorney having jurisdiction to initiate, a proceeding for a determination of probable cause under IC 35-39-6.

Sec. 7. Upon a finding of probable cause under IC 35-39-6, the matter proceeds to trial as described in IC 35-39-7, and the person named as defendant at the trial is subject to the requirements and entitlements of this article.

Chapter 9. Annual Examinations and Contested Release Petitions

Sec. 1. An examination of the mental condition of each person committed under this article must be made once every year.

Sec. 2. A person committed under this article may retain, or if the person is indigent and so requests, the court may appoint, a qualified expert or professional person to perform the examination required under section 1 of this chapter. The expert or professional person is entitled to access to all records concerning the person.

Sec. 3. (a) An annual report of the examination required under section 1 of this chapter must be provided to the court that committed the person under this article.

(b) The court shall hold a hearing to conduct an annual review of the status of the committed person.

(c) This article does not prohibit the person from otherwise petitioning the court for discharge at the annual hearing.

Sec. 4. (a) The division of mental health and addiction shall provide the committed person with an annual written notice of the person's right to petition the court for release over the division's objection. The notice must contain a waiver of rights. The division shall forward the notice and waiver form to the court with the annual report.

(b) The committed person is entitled to have an attorney represent the person at a contested petition hearing, but the person is not entitled to be present at the contested petition hearing.

Sec. 5. (a) If the court at a contested petition hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has changed so that the person

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1 is safe to be at large and will not engage in acts of sexual violence
2 if discharged, the court shall set a contested release hearing on the
3 issue.

4 (b) At a contested release hearing scheduled under subsection
5 (a), the committed person is entitled to be present and is entitled to
6 the benefit of the constitutional protections that are afforded the
7 person at the person's initial commitment proceeding.

8 Sec. 6. (a) The attorney general shall represent the state at a
9 contested release hearing held under section 5 of this chapter and
10 is entitled to:

11 (1) a jury trial; and

12 (2) have the committed person evaluated by a qualified expert
13 or professional person chosen by the state.

14 (b) The committed person is also entitled to have a qualified
15 expert or professional person evaluate the person on the person's
16 behalf. The court shall appoint an expert or a professional person
17 if the person is indigent and requests the appointment.

18 Sec. 7. The burden of proof at a contested release hearing held
19 under section 5 of this chapter is on the state to prove beyond a
20 reasonable doubt that the committed person's mental abnormality
21 or personality disorder remains such that the person:

22 (1) is not safe to be at large; and

23 (2) if released, is likely to engage in acts of sexual violence.

24 Chapter 10. Uncontested Petition for Release

25 Sec. 1. (a) For a person committed to the custody of the division
26 of mental health and addiction under this article, if the division of
27 mental health and addiction determines that the person's mental
28 abnormality or personality disorder has changed so that the person
29 is not likely to commit predatory acts of sexual violence if released,
30 the division of mental health and addiction shall authorize the
31 person to submit an uncontested petition to the court for release.

32 (b) The uncontested petition for release must be served on the
33 court that heard the initial commitment proceeding under this
34 article and the attorney general.

35 Sec. 2. (a) The court, upon receipt of an uncontested petition for
36 release filed under section 1 of this chapter, shall order a hearing
37 to be held not later than thirty (30) days after the date of receipt of
38 the uncontested petition for release.

39 (b) The attorney general shall represent the state at a hearing
40 held under this section. The attorney general is entitled to have the
41 petitioner examined by a qualified expert or professional person of
42 the attorney general's choice.

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1 **Sec. 3. (a) A hearing on an uncontested petition for release held**
 2 **under this chapter must be held before a jury if demanded by**
 3 **either the uncontested petitioner or the attorney general.**

4 **(b) The burden of proof is on the attorney general to show**
 5 **beyond a reasonable doubt that the petitioner's mental**
 6 **abnormality or personality disorder remains such that the**
 7 **petitioner is not safe to be at large and that if released is likely to**
 8 **commit predatory acts of sexual violence.**

9 **Chapter 11. Subsequent Release Petitions**

10 **Sec. 1. This article does not prohibit a person from filing an**
 11 **unscheduled petition for release under this article. However, if a**
 12 **person has previously filed a contested petition for release and the**
 13 **court determined, either upon review of the petition or following**
 14 **a hearing that the petitioner's:**

15 **(1) petition was frivolous; or**

16 **(2) condition had not changed so that the person was safe to**
 17 **be at large;**

18 **the court shall deny the subsequent petition unless the petition**
 19 **contains facts upon which a court could find the condition of the**
 20 **petitioner had changed so that a hearing is warranted.**

21 **Sec. 2. Upon receipt of a first or subsequent petition from a**
 22 **committed person, the court shall endeavor whenever possible to**
 23 **review the petition to determine if the petition is based upon**
 24 **frivolous grounds, and, if so, shall deny the petition without a**
 25 **hearing.**

26 **Chapter 12. Costs; Duties; Reimbursement**

27 **Sec. 1. The division of mental health and addiction is responsible**
 28 **for all costs relating to the evaluation and treatment of persons**
 29 **committed to the division's custody under this article.**

30 **Chapter 13. Notice to Victims Concerning Release of Sexual**
 31 **Predators**

32 **Sec. 1. (a) In addition to any other information required to be**
 33 **disclosed under this article, before the release of a defendant**
 34 **committed under this article, the division of mental health and**
 35 **addiction shall give written notice of the defendant's release to a**
 36 **victim of the defendant's activities or crime if the victim is alive**
 37 **and the victim's address is known to the division.**

38 **(b) If a victim is deceased, the division must give notice under**
 39 **this chapter to the victim's family, if the family's address is known**
 40 **to the division.**

41 **(c) Failure to give notices required by this section is not a reason**
 42 **for postponement of release.**

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1 **Sec. 2. Failure to give notice required by section 1 of this**
 2 **chapter does not create a cause of action against:**

3 (1) the state; or

4 (2) a state employee acting within the scope of the employee's
 5 employment;

6 **as a result of the failure to notify.**

7 **Chapter 14. Special Allegation of Sexually Motivated Defendant**

8 **Sec. 1. The prosecuting attorney shall file a special allegation of**
 9 **a sexually motivated defendant not later than ten (10) days after**
 10 **arraignment in every criminal case other than a sex offense under**
 11 **IC 35-42-4 if sufficient admissible evidence exists that, when**
 12 **considered with the most plausible, reasonably foreseeable defense**
 13 **that could be raised under the evidence, would justify a finding by**
 14 **a reasonable and objective trier of fact that the crime was**
 15 **committed by a person who was sexually motivated to commit the**
 16 **crime.**

17 **Sec. 2. (a) In a criminal case in which a special allegation is filed**
 18 **under this chapter, the state must prove beyond a reasonable doubt**
 19 **that the defendant was sexually motivated to commit the crime.**

20 (b) For a prosecution in which a special allegation of a sexually
 21 motivated defendant is filed under section 1 of this chapter in
 22 which the defendant is convicted of the offense:

23 (1) the court shall make a written finding as to whether the
 24 defendant was sexually motivated to commit the crime; or

25 (2) if there is a jury trial, the jury, if it finds the defendant
 26 guilty, shall determine by special verdict whether the
 27 defendant was sexually motivated to commit the crime.

28 **The finding or verdict may not be applied to sex offenses under**
 29 **IC 35-42-4.**

30 (c) The prosecuting attorney may not withdraw the special
 31 allegation of a sexually motivated defendant without approval of
 32 the court through an order of dismissal of the special allegation.
 33 **The court may not order dismissal of a special allegation unless:**

34 (1) it finds that the order is necessary to correct an error in
 35 the initial charging decision; or

36 (2) there are evidentiary problems that make proving the
 37 special allegation doubtful.

38 **Chapter 15. Confidential or Privileged Information and Records**

39 **Sec. 1. In order to protect the public, relevant information and**
 40 **records maintained under this article that are otherwise**
 41 **confidential or privileged must be released to an agency or to the**
 42 **attorney general to:**

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1 (1) meet the notice requirement provided in IC 35-39-3; and
 2 (2) determine whether a person is, or continues to be, a
 3 sexually violent predator.
 4 **Chapter 16. Court Records**
 5 **Sec. 1. (a)** Psychological reports, drug and alcohol reports,
 6 treatment records, reports of the diagnostic center, medical
 7 records, and victim impact statements that are submitted to the
 8 court or admitted into evidence under this article are part of the
 9 court record.
 10 **(b)** The court record under this section must be sealed and may
 11 be opened only on order of the court.

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